

立法會
Legislative Council

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**Bills Committee on
Witness Protection Bill**

**Minutes of meeting
held on Thursday, 20 January 2000 at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Gary CHENG Kai-nam, JP
Hon Andrew WONG Wang-fat, JP

Members absent : Hon David CHU Yu-lin
Hon Mrs Sophie LEUNG LAU Yau-fun, JP

Public Officers attending : Mrs Juliana CHEN
Principal Assistant Secretary for Security (SD)

Mr Tony LAM
Assistant Secretary for Security E

Mr CHAN Wai-ki
Chief Superintendent of Police (Crime)
Hong Kong Police Force

Mr W B MADDAFORD
Senior Assistant Law Draftsman

Mr LAI Tung-kwok
Assistant Director of Immigration (Personal Documentation)

Mr WONG Sai-chiu
Assistant Director of Operations, ICAC

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Election of Chairman

Mr James TO was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(LegCo Brief Ref SBCR 3/3/2831/87 Pt. 17, LC Paper Nos. LS 180/98-99 and CB(2)872/99-00)

2. At the invitation of the Chairman, Principal Assistant Secretary for Security (Special Duties) (PAS(S)(SD)) briefed members on the main proposals in Witness Protection Bill (the Bill). She informed members that the Bill was introduced into the former Legislative Council (LegCo) in July 1996 (1996 Bill) but the then Bills Committee formed to study the 1996 Bill did not have time to study it. Assistant Secretary for Security E (AS(S)E) said that consultation of the legislative proposals had been made with the former LegCo Panel on Security in April 1996 and the Provisional Legislative Council (PLC) on 19 March 1998. The Bill was not introduced into PLC since it was not a piece of essential legislation.

3. Chief Superintendent Police (Crime)(CSP(C)) informed members that under the existing practice, the name of a protected witness could only be changed by means of a deedpoll. This arrangement could not provide sufficient protection to the witness since consequential changes could not be made to his birth and marriage certificates.

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Threat assessment

4. The Chairman asked whether there were provisions on the procedure for threat assessment in the Bill. AS(S)E said that the factors to be considered in deciding whether or not to include a person in the witness protection programme (WPP) were set out in clause 4(3) of the Bill.

Approving authority and appeals

5. The Chairman asked about the persons designated as the approving authority for the purpose of the Bill. CSP(C) said that the Director of Crime and Security was designated as the approving authority by the Commissioner of Police. Any person aggrieved by a decision of the approving authority not to include him or to terminate his protection as a participant in WPP could request for a review of the decision by a review committee comprising the Deputy Commissioner of Police (Operations) and other members. Assistant Director of Operations of Independent Commission Against Corruption (ADO/ICAC) said that the Director of Operations was designated as the approving authority by the Commissioner of ICAC. Any person aggrieved by a decision of the approving authority not to include him or to terminate his protection as a participant in WPP could request for a review of the decision by the Head of Operations, who was a Deputy Commissioner of ICAC. After the passage of the Bill, consideration would be given to establishing a review committee comprising the Head of Operations and a few other members to be appointed by the Chief Executive of the Hong Kong Special Administrative Region (CE).

6. In response to the Chairman, AS(S)E said that there had not been any appeal against the approving authority's decision of not including a witness in WPP.

Benefits and obligations associated with the former identity

7. Referring to paragraph 9 of the LegCo Brief, Mr CHENG Kai-nam asked about the meaning of benefits to which the witness was entitled. He also asked how the rights and obligations associated with the former identity of a witness who had changed his identity ("identified witness"), such as credit card balances, points deducted under the point-penalty system for driving licences, mortgage loans and medical records, were to be dealt with. ADO/ICAC said that the spirit of the Bill was to ensure that a witness's rights, such as estates inherited from a relative, and obligations would be unchanged upon the change of his identity. An "identified witness" had to continue to honour outstanding rights and obligations associated with his former identity. In extreme circumstances, consideration might be given to arranging an "identified witness" to temporarily restore his former identity so that he could exercise his rights before reverting back to his new identity. He said that the points deducted under the point-penalty system for driving licences would probably remain with the former identity. If the "identified witness" was competent in driving, he could apply for a new driving licence and take necessary driving tests in his new

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identity. AS(S)E added that the objective of the Bill was to encourage more witnesses to stand out and give evidence against suspects in serious crimes. The transfer of rights to the new identity might necessitate the amendment of large number of documents, thus exposing the "identified witness" to greater risk.

8. Mr Andrew WONG said that since an "identified witness" would not have access to letters sent to him in his old identity, he would not be aware of the latest development about obligations under his former identity. The interest thus accumulated on his outstanding payments might result in a substantial increase to his liability when his former identity was restored. ADO/ICAC said that a witness was required to disclose all rights and benefits associated with his former identity to the approving authority. In this connection, the Bill provided that a notice could be served on the witness requiring him to disclose all his obligations and restrictions imposed on him. Unless the participant satisfied the approving authority that the obligations would be dealt with according to law or the restrictions would be complied with, the approving authority would take such action as considered reasonably necessary to ensure that they were so dealt with.

9. CSP(C) said that a witness was required to provide the approving authority with all information relating to his rights and obligations. In determining whether a witness should be admitted to WPP, such information would be considered in association with other factors such as the seriousness of the offence concerned, the nature and importance of that information, and public safety. He stressed that a mechanism had been established for handling appeals. Efforts would be made to settle the rights and obligations of the witness concerned before the change of identity. He added that changing of identity was only one of many ways to protect a witness. Before a witness was admitted to WPP, a memorandum of understanding (MOU) would be signed with the witness. The witness could consider the merits and drawbacks of the offer under WPP before deciding whether to sign the MOU.

10. The Chairman expressed concern that a witness might be exposed to danger if he had provided information to the police but was not admitted to WPP due to his failure to settle the outstanding credit card balances. CSP(C) said that the Police had a responsibility to prevent any anticipated crime. This was currently implemented even without the Bill. ADO/ICAC added that any outstanding liabilities to credit card companies could either be settled in full by the witness out of his own pocket or out of a financial support arrangement contained in the MOU before the change of identity. He added that ICAC had not come across the need to change the identity of any witness since its establishment 25 years ago.

Former and new identities of a witness

11. ADO/ICAC said that once a witness received a new identity, any document identifying his former identity would have to be surrendered to the approving authority

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and kept until his former identity was restored. This former identity would not be deleted or replaced. It would remain in records. Mr Andrew WONG said that an "identified witness" would be exposed to more danger if his old records were not erased. He said that the alteration of more records would only expose the witness to more risk. ADO/ICAC said that there would be no evidence in the old records that enabled a third party to identify that the person concerned had been admitted into WPP.

12. Referring to paragraph 16 of the LegCo Brief, Mr CHENG Kai-nam asked whether the former and new identities of a witness would exist at the same time. AS(S)E said that a witness would not possess two identities at the same time. Once a witness received a new identity, he would no longer possess any document identifying his former identity. He added that clause 10 of the Bill empowered an "identified witness" not to disclose his former identity in circumstances where he would normally be obliged to do so.

13. PAS(S)(SD) said that the identity of the spouse and children of the witness would also be changed, where necessary. To avoid exposing himself to possible danger, a witness would be advised to terminate some of his social links and repay some of his debts before joining WPP.

14. In response to Mr Andrew WONG, PAS(S)(SD) said that academic qualifications of a witness would not be transferred from a witness's former identity to his new identity. Mr WONG expressed concern that it might be difficult for an "identified witness" to make a living if academic qualifications could not be transferred to a witness's new identity. CSP(C) said that the transfer of academic records and professional qualifications to the new identity would expose a witness to higher risk, as more people would become aware that the person concerned had been admitted into WPP. The same problem was also encountered in overseas countries. He added that suitable training or retraining would be provided to enable the "identified witness" to make a living, although it might not enable him to maintain his past living standard.

15. Mr CHENG Kai-nam asked how a witness's rights could be protected if his standard of living was lower than that in the past. CSP(C) responded that the level of danger was usually proportional to the closeness of relationship between the witness and the suspect. Witnesses admitted into WPP were mostly "accomplice witnesses" involved in serious crimes. Most of these witnesses did not possess high academic or professional qualifications. As regards witnesses who had no relationship with the accused, a relocation of his home would be adequate in most cases and there was usually no need to change his identity. ADO/ICAC added that witnesses admitted into WPP were usually those involved in corruption or organised and serious crimes. A major consideration on whether a witness should be admitted into WPP was the importance of the information or testimony given by the witness. If the information was not very important, there might not be a need for the witness to give evidence

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before the court.

Creation of faked documents other than those set out in clause 8(1)

16. Mr Andrew WONG asked whether the creation of documents other than identity cards and birth certificates for the new identity was permissible under the Bill. AS(S)E referred to clause 8(1) of the Bill and said that the documents which could be issued when there was a change in the identity of the witness were confined to the following only -

- (a) birth certificate under the Births and Deaths Registration Ordinance (Cap. 174);
- (b) identity card under the Registration of Persons Ordinance (Cap. 171); and
- (c) marriage certificate under the Marriage Ordinance (Cap. 181).

17. Mr Andrew WONG asked how the rights and obligations of an "identified witness" could be protected if all academic qualifications relating to his former identity would not be transferred to his new identity. He expressed concern that it would be very difficult for an "identified witness" to make a living if academic qualifications could not be transferred and a fictitious history was not created. ADO/ICAC said that to his knowledge, it was a common law principle that an act would not amount to an offence if it was not prohibited in the law. An "identified witness" could create his own fictitious history. Appropriate information was also provided to "undercover" agents on how to inform others about his fictitious history. Referring to clause 16 of the Bill, PAS(S)(SD) said that the approving authority, officers working with him and any other public officer or person performing functions in relation to WPP were not liable to legal action in respect of an act done or omitted to be done in relation to WPP. She undertook to examine whether the production of forged documents under WPP would be covered by the Bill.

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Overseas experience

18. At the request of the Chairman, AS(S)E agreed to provide information on the experience of overseas countries, especially those with legislation on witness protection, in the implementation of WPP, and a comparison of the Bill with similar legislation in overseas countries.

Adm

Approval of new identity

19. Referring to clause 8(2), the Chairman asked why the establishment of a new identity under WPP had to be approved by CE. AS(S)E responded that in order to prevent abuse, the establishment of a new identity had to be recommended by a very

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senior officer of the Police or ICAC and approved by CE. PAS(S)(SD) added that the admission of a witness into WPP would not require the approval of CE.

Definition of "witness"

20. On the question of whether the term "witness" included public officers, AS(S)E said that no particular reference was made in the definition of the term to public officers. ADO/ICAC said that the term "witness" had a wide definition. It included any person who gave evidence to the court in a court case. If the safety of a law enforcement officer discharging his duties was threatened, the Administration would try its best to protect him.

III. Date of next meeting

21. Members agreed that the Clerk would liaise with the Administration on the date of the next meeting.

22. There being no other business, the meeting ended at 5:50 pm.

Legislative Council Secretariat

10 April 2000